

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

HAOU-YAN WANG,

Defendant.

Criminal Action No. TDC-24-211

JURY INSTRUCTIONS [DRAFT]

I.	ROLE OF THE COURT AND JURY	1
	1. Introduction.....	1
	2. Role of the Court.....	2
	3. Jury to Disregard Court's View	3
	4. Role of the Jury	4
	5. Juror Obligations.....	5
II.	PRINCIPLES OF EVALUATION.....	6
	6. The Government as a Party.....	6
	7. Improper Considerations.....	7
	8. Sympathy	8
	9. Conduct of Counsel.....	9
	10. Publicity	10
	11. Presumption of Innocence and Burden of Proof.....	11
	12. Evidence.....	12
	13. Stipulation of Facts	14
	14. Charts and Summaries as Evidence	15
	15. Charts and Summaries as Demonstrative Aids.....	16
	16. Recordings	17
	17. Transcripts of Recordings	18
	18. Search Warrants	19
	19. Specific Investigative Techniques Not Required.....	20
	20. Direct and Circumstantial Evidence	21
	21. Inferences.....	22
	22. Witness Credibility	23
	23. Impeachment by Prior Inconsistent Statement	25
	24. Interest in Outcome.....	26
	25. Expert Witnesses.....	27
	26. Law Enforcement Witnesses.....	28
	27. Defendant's Interest if Defendant Testifies	29
III.	THE CHARGES	29
	28. Indictment is Not Evidence.....	29
	29. Jury to Consider Only the Charge.....	31
	30. Jury to Consider Only This Defendant	32
	31. Failure to Name a Defendant	33

32. Multiple Counts	34
33. Variance of Dates.....	35
34. Major Fraud Against the United States: The Indictment and the Statute	36
35. Major Fraud Against the United States: Elements of the Offense.....	38
36. Major Fraud Against the United States: First Element – Scheme To Defraud the United States	39
37. Major Fraud Against the United States: Second Element – Intent to Defraud	42
38. Major Fraud Against the United States: Third Element – Government Grant	44
39. Major Fraud Against the United States: Fourth Element – Value of Grant.....	45
40. Wire Fraud: The Indictment and the Statute.....	46
41. Wire Fraud: Elements of the Offense	48
42. Wire Fraud: First Element – Existence of a Scheme or Artifice to Defraud	49
43. Wire Fraud: Second Element – Participation in Scheme with Intent	52
44. Wire Fraud: Third Element – Use of the Wires.....	55
45. False Statements: The Indictment and the Statute	57
46. False Statements: Purpose of the Statute	59
47. False Statements: Elements of the Offense.....	60
48. False Statements: The First Element – Statement or Representation	61
49. False Statements: The Second Element – Materiality	62
50. False Statements: The Third Element – False, Fictitious or Fraudulent Statement....	63
51. False Statements: The Fourth Element – Knowing and Willful Conduct	64
52. False Statements: The Fifth Element – Matter Within the Jurisdiction of the United States Government.....	65
53. Willfully Causing a Crime	66
54. Authentication of Evidence.....	68
55. Statute of Limitations.....	69
56. Venue	70
57. Punishment.....	71
IV. JURY DELIBERATIONS.....	72
58. Deliberations and Verdict Form.....	72

I. ROLE OF THE COURT AND JURY

1. Introduction

Ladies and gentlemen, now that all the evidence has been presented, let me thank you for your promptness in following our schedule, for your attention throughout this case, and for your patience when it has been necessary to have discussions out of your presence. Before the attorneys deliver their closing arguments, I will now instruct you on the law that applies in this case. The instructions should assist you in following the arguments and will be your guide as you conduct deliberations.

It has been clear that up to now, you have faithfully discharged your duty to listen carefully and observe each witness who testified. I ask you to give me that same careful attention as I instruct you on the law. You will receive a written version of these instructions to take into the jury room, so you do not necessarily need to take notes.

2. Role of the Court

As I mentioned at the outset of the trial, the functions of the judge and the jury are different. During the trial, it was my duty to decide what testimony and evidence is relevant under the law for your consideration. Now that you have heard all of the evidence in the case, it is my duty as the trial judge to instruct you as to the law that applies to this case. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

You are required to follow the law as I define it for you. If any attorney has stated or states a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be—or ought to be—it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

3. Jury to Disregard Court's View

Since you are the sole and exclusive judges of the facts, I do not have, and do not mean to convey, any opinion as to the facts or what your verdict should be. Anything I have said during the trial, including the rulings I have made during the trial, are not a sign of any view of what your decision should be. I have not expressed, and have not intended to convey, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference or inferences should be drawn from the evidence. If any expression of mine has seemed to convey an opinion relating to any of these matters, I instruct you to disregard it.

4. Role of the Jury

As members of the jury, it is your duty to pass upon and decide the factual issues in this case. You are the sole and exclusive judges of the facts. You consider and weigh the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them.

5. Juror Obligations

You are to perform the duty of finding the facts in this case without bias or prejudice to any party. I remind you that before you were accepted and sworn to serve as a juror, you were asked questions that related to your ability to be fair and impartial, and to be free from bias and prejudice. On the basis of those answers, you were accepted as jurors by the court and the parties. Those answers are as binding on each of you now as they were then, and will remain so, until you are discharged at the conclusion of this case.

II. PRINCIPLES OF EVALUATION

6. The Government as a Party

In this case, the parties are the United States Government and the defendant, Dr. Hoau-Yan Wang. This case is important to the Government, because the enforcement of criminal laws is a matter of prime concern to the community. It is also important to Dr. Wang, who is charged with serious crimes.

The fact that the prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than any other party in a trial. By the same token, the Government is entitled to no less consideration. All parties, whether the Government or an individual defendant, stand as equals in this courtroom.

7. Improper Considerations

Your verdict must be based solely upon the evidence developed at trial or the lack of evidence.

In reaching your verdict, it would be improper for you to consider any personal feelings you may have about the defendant's race, religion, national origin, sex, or age. All persons are entitled to the presumption of innocence, and the Government has the burden of proof, as I will discuss in a moment.

It would be equally improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision-making process.

8. Sympathy

You may not be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial question that you must ask yourselves as you sift through the evidence is: Has the Government proven the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has proven that the defendant is guilty of the crimes charged solely on the basis of the evidence and subject to the law as I instruct you. It must be clear to you that once you let fear or prejudice, or bias or sympathy, interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

Again, your verdict must be based exclusively upon the evidence or the lack of evidence in the case.

9. Conduct of Counsel

You may not allow any views you may have about the conduct of the attorneys in this case to have any impact on your consideration of this case. It is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. The attorneys also have the right and duty to ask me to make rulings of law and to request conferences at the bench out of the hearing of the jury. You may not allow the fact that an attorney objected to the admissibility of evidence, asked for a conference out of the hearing of the jury, or asked the court for a ruling on the law to affect your consideration of this case.

10. Publicity

Your verdict must be based solely on the evidence presented in this courtroom in accordance with my instructions. You must completely disregard any report that you have read or heard in the media or seen on television or the internet. It would be unfair to consider such reports, since they are not evidence and the parties have no opportunity to explain or contradict them. It would be a violation of your oath as jurors to allow yourselves to be influenced in any manner by such publicity.

11. Presumption of Innocence and Burden of Proof

As the finders of fact, it is your role to consider whether, based on the evidence admitted in this case, the Government has proven that the defendant is guilty of the crime with which he is charged. Although the defendant has been indicted, you must remember that an indictment is only an accusation. It is not evidence. The defendant has pleaded not guilty to the Indictment in this case.

As a result of the defendant's plea of not guilty, the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant because the law never imposes upon the defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

The law presumes a defendant to be innocent of all the charges against him or her. I therefore instruct you that the defendant is to be presumed by you to be innocent throughout your deliberations until such time, if ever, that you as a jury are satisfied that the Government has proven the defendant guilty beyond a reasonable doubt.

The defendant began the trial with a clean slate. This presumption of innocence alone is sufficient to acquit the defendant unless you as jurors are unanimously convinced beyond a reasonable doubt of the defendant's guilt, after a careful and impartial consideration of all of the evidence in this case. If the Government fails to sustain its burden on any charge as to the defendant, you must find the defendant not guilty as to that charge.

This presumption was with the defendant when the trial began, remains with him even now, and will continue with him into your deliberations until such time, if ever, that you are convinced that the Government has proven the defendant's guilt beyond a reasonable doubt.

12. Evidence

In determining the facts, you must rely upon your own recollection of the evidence. You may consider not only the evidence referred to by the attorneys in their arguments, but you may also consider any evidence in this case which you may believe to be material, even if not referred to by the attorneys.

The evidence in this case consists of the sworn testimony of witnesses; all exhibits received in evidence; and all facts which may have been admitted by stipulation. Exhibits which have been marked for identification but were not admitted may not be considered by you as evidence. Only those exhibits admitted may be considered as evidence.

You are to consider only the evidence presented, and you may not guess or speculate as to any fact not presented as evidence. Let me remind you what is *not* evidence.

The fact that there was an indictment bringing charges in this case is not evidence, and you may draw no inference from that fact.

What I may have said during the trial or what I may say in these instructions is not evidence.

What the lawyers have said in their opening statements and their closing arguments is not evidence, although you may give consideration to those arguments in making up your mind on what inferences to draw from the facts which are in evidence.

Anything you may have seen or heard about this case outside the courtroom is not evidence and must be entirely disregarded.

Statements of the attorneys, including their objections and their questions, are not evidence. A question put to a witness is never evidence; it is only the answer which is evidence. At times, a lawyer may have incorporated into a question a statement which assumed certain facts to be true and asked the witness if the statement was true. If the witness denied the truth of the statement, or

if the question was not answered, or an objection to the question was sustained, then you may not consider the fact to be true simply because it was contained in a lawyer's question.

Any answer that I directed you to disregard, or any evidence that I directed to be struck from the record is not evidence, and you must dismiss it from your mind, completely and entirely. If I instructed you that certain evidence was admitted for one purpose only, you may not consider it for any other purpose.

From time to time I have been called upon to pass upon the admissibility of certain evidence, such as by ruling on objections to questions. You should not be concerned with my rulings or the reasons for those rulings, and you are not to draw any inferences from them. In admitting evidence to which an objection has been made, I did not determine what weight should be given to such evidence, nor did I pass judgment on the credibility of the evidence. For any question to which I sustained an objection, you must not guess what the answer might have been, and you must not speculate as to the reason the question was asked or the reason for the objection. You should not speculate about the nature or effect of any discussions I had with counsel outside of your hearing or sight.

I will now discuss some specific forms of evidence that have been admitted in this case and some other issues relating to evidence not offered in this case.

13. Stipulation of Facts

A stipulation is an agreement among the parties that a certain fact is true. You should regard such agreed facts as true.

14. Charts and Summaries as Evidence

Certain exhibits have been presented in the form of charts and summaries. I decided to admit these charts and summaries in place of the underlying evidence that they represent in order to save time and avoid unnecessary inconvenience. You should consider these charts and summaries as you would any other evidence.

15. Charts and Summaries as Demonstrative Aids

One or more parties has presented exhibits in the form of charts and summaries which were shown to you in order to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based and are not themselves independent evidence. Therefore, you are to give no greater consideration to the charts and summaries than you would give to the evidence upon which they are based.

It is for you to decide whether the charts and summaries correctly present the information contained in the testimony and in the exhibits on which they are based. You are entitled to consider the charts and summaries if you find that they are of assistance to you in analyzing and understanding the evidence.

16. Recordings

The Government has offered evidence in the form of recordings. There is, however, no agreement or stipulation as to the identity of speakers on any of the recordings so that you will have to determine for yourselves the identity of the parties in each conversation based on the testimony you heard and the evidence produced at trial.

17. Transcripts of Recordings

The Government was permitted to provide to you documents that it prepared which contain the Government's interpretation of what is said on the recordings which have been received as evidence. Those transcripts were provided to you as an aid or guide to assist you in listening to the recordings. However, they are not in and of themselves evidence. You will not have the transcripts with you during your deliberations. Therefore, when the recordings were played, I advised you to listen carefully to the recordings themselves. You alone should make your own interpretation of the content of the recordings based on what you heard. If you think you heard something different from what appeared on the transcript, then what you heard is controlling.

18. Search Warrants

You have also heard testimony in this case regarding evidence seized by the Government during the execution of search warrants. You are instructed that it is the responsibility of the Court alone to determine the validity and legality of those search warrants. It is up to you to decide what significance, if any, the evidence seized may have in this case.

19. Specific Investigative Techniques Not Required

You may hear argument by counsel that the Government did not utilize specific investigative techniques. You may consider that fact in deciding whether the Government has met its burden of proof, because as I told you, you should look to all of the evidence or lack of evidence in deciding whether the defendant is guilty. However, you also are instructed that there is no legal requirement that the Government use any specific investigative techniques to prove its case.

The law does not require the prosecution to call as witnesses all persons who have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters at issue in this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

Your task, as I have said, is to determine whether or not, on the evidence or lack of evidence, the guilt of the defendant has been proven beyond a reasonable doubt.

20. Direct and Circumstantial Evidence

In deciding whether or not the Government has met its burden of proof, you may consider both direct evidence and circumstantial evidence. The law makes no distinction between direct and circumstantial evidence. Circumstantial evidence is of no more or less value than direct evidence, and you may consider either or both and may give them such weight as you conclude is warranted. A case may be proven by direct evidence alone, circumstantial evidence alone, or a combination of the two.

Direct evidence is direct proof of a fact, such as testimony of an eyewitness as to what he or she saw, heard, or observed. For example, if a witness came into this courtroom and testified that she had just been outside and saw that it was raining, that would be direct evidence that it was raining.

Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. To give an example, suppose that when you came into the courthouse today, the sun was shining, and it was a nice day. Then later, as you were sitting here, someone walked in with a dripping wet umbrella and wet raincoat. Because you cannot look outside of the courtroom and cannot see whether or not it is raining, you have no direct evidence of that fact. But from the combination of the facts you observed about the umbrella and the raincoat, it would be reasonable for you to infer that it had begun to rain.

That is all there is to circumstantial evidence. Using your reason and experience, you infer from established facts the existence or the nonexistence of some other fact. Please note that using circumstantial evidence is not a matter of guesswork or speculation; it is a matter of making a logical inference. In drawing inferences, you should exercise your common sense and everyday experience.

21. Inferences

In discussing circumstantial evidence, I have highlighted the fact that in your consideration of the evidence, you are not limited to the statements of the witnesses or the words in an exhibit. You are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you find to be justified in light of your own experience.

Inferences are deductions or conclusions which you are permitted to draw—but not required to draw—from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should use your common sense and everyday experience. An inference is not a suspicion or a guess. It is a reasoned, logical decision to conclude that a disputed fact exists on the basis of another fact which you know exists.

There are times when different inferences may be drawn from the facts. The Government asks you to draw one set of inferences, while the Defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

Let me remind you that, whether based on direct or circumstantial evidence, or upon the logical, reasonable inferences drawn from such evidence, you must be satisfied of the guilt of the defendant beyond a reasonable doubt before you may convict.

22. Witness Credibility

You should also use your common sense and everyday experience for another important part of your consideration of the evidence: determining how believable each witness was in his or her testimony. In order to find the facts in this case, you will need to make judgments about the testimony of the witnesses you have listened to and observed. You are the sole judges of the credibility of each witness and of the importance of his or her testimony. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence which may help you decide the truth and the importance of each witness's testimony.

You watched each witness testify. Everything a witness said or did on the witness stand counts in your determination. You should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. Among the factors you should consider are:

1. The witness's opportunity to see, hear, or know the facts about which he or she testified;
2. The witness's memory and level of recall of the events;
3. Whether the witness's recollection of the facts stands up in light of the other evidence in the case, whether it was consistent with or contradicted by other evidence;
4. Whether the witness's testimony was consistent with other statements he or she made during testimony or at an earlier time;
5. The witness's demeanor in testifying;
6. Any relationship the witness may have with the Government or the defendant that may affect how he or she testified;

7. Any interest, financial or otherwise, that the witness may have in the outcome of the case; and

8. Any bias, prejudice, or hostility the witness may have for or against any party.

In summary, what you must try to do in deciding credibility is to size up a person just as you would in any important matter when you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. Always remember that you should use your common sense, your good judgment, and your own life experience.

You need not believe a witness even though the testimony is uncontradicted. You may believe, all, part, or none of the testimony of any witness.

I will now discuss some specific issues relating to witness testimony.

23. Impeachment by Prior Inconsistent Statement

You have heard evidence that witnesses may have made statements on earlier occasions that counsel argues are inconsistent with their trial testimony. If the earlier statement was made under penalty of perjury during a trial, hearing, other court proceeding, or deposition, you may consider the earlier statement as evidence of the fact to which the witness testified on that earlier occasion.

If the earlier statement was not made under penalty of perjury during a trial, hearing, other court proceeding, or deposition, the evidence of a prior inconsistent statement is not to be considered by you as evidence of the fact stated on that earlier occasion or as affirmative evidence bearing on the defendant's guilt. Evidence of the prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with the witness's trial testimony, you may consider that fact in deciding how much of the witness's trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency relates to an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to be given to the inconsistent statement in determining whether to believe all or part of the witness's testimony.

24. Interest in Outcome

In evaluating the credibility of the witnesses, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest in the outcome creates a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

25. Expert Witnesses

In this case, I have permitted "A WITNESS/MULTIPLE WITNESSES" , "NAME OF WITNESS/ES" , to express HIS/HER opinions about matters that are in issue. A witness may be permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience, and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify to an opinion. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

26. Law Enforcement Witnesses

You have heard the testimony of law enforcement officers. The fact that a witness may be employed by the federal or state government as a law enforcement officer does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than an ordinary witness.

At the same time, it is quite legitimate for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of a law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

27. Defendant's Interest if Defendant Testifies

Defendant's Testimony

In a criminal case, the defendant cannot be required to testify, but, if he or she chooses to testify, he or she is, of course, permitted to take the witness stand on his or her own behalf. In this case, the defendant has decided to testify. You should examine and evaluate his testimony just as you would the testimony of any witness with an interest in the outcome of this case.

Defendant's Right Not to Testify

Dr. Wang did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any other evidence, because it is the Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he or she is innocent.

You must not attach any significance to the fact that Dr. Wang did not testify. No adverse inference against the defendant may be drawn by you because he did not take the witness stand. You may not consider this against the defendant in any way in your deliberations in the jury room.

III. THE CHARGES

28. Indictment is Not Evidence

With these general instructions in mind, I will now turn to the charges against the defendant, as contained in the Indictment. I emphasize to you that an indictment itself is not

evidence. It merely describes the charges made against a defendant. It is an accusation. It may not be considered by you in any way as evidence of the guilt of the defendant.

In reaching your determination of whether the Government has proved that the defendant is guilty beyond a reasonable doubt, you may consider only the evidence introduced, or the lack of evidence.

29. Jury to Consider Only the Charge

The defendant is not charged with committing any crimes other than the offenses contained in the Indictment. You have heard evidence of other acts allegedly committed by the defendant. When that evidence was introduced, I instructed you that it was to be considered by you solely for a limited purpose. But I want to emphasize to you now that you are not to consider that evidence for any other purpose and you are only to return a verdict as to the charges contained in the Indictment.

30. Jury to Consider Only This Defendant

Your role is to decide whether or not the Government has proven beyond a reasonable doubt that the Defendant, Dr. Hoau-Yan Wang, is guilty of one or more of the charged crimes. You are not being asked whether any other person has been proven guilty. Your verdict should be based solely upon the evidence or lack of evidence as to Dr. Wang, in accordance with my instructions, and without regard to whether the guilt of any other person has or has not been proven.

31. Failure to Name a Defendant

You may not draw any inference, favorable or unfavorable, towards the Government or the defendant on trial, from the fact that certain persons were not named as defendants in the Indictment. The fact that such persons are not defendants in this trial must play no part in your deliberations. Whether a person should be named as a co-conspirator is a matter within the sole discretion of the United States Attorney and the Grand Jury. Therefore, you may not consider it in any way in reaching your verdict as to the defendant on trial.

32. Multiple Counts

The Indictment contains a total of four counts. Each count charges the defendant with a different crime.

You must consider each count of the Indictment separately, and you must return a separate verdict for each count in which the defendant is charged.

In reaching your verdict, bear in mind that guilt is personal and individual. Your verdict of guilty or not guilty must be based solely upon the evidence about the defendant. The case against the defendant, on each count, stands or falls upon the proof or lack of proof against the defendant alone.

33. Variance of Dates

The Indictment alleges that the offenses occurred on certain dates or at certain times. It does not matter if that Indictment charges that a specific act occurred on or about a certain date or time, and the evidence shows that, in fact, it was on another date or time. The law only requires a substantial similarity between the dates alleged in the Indictment and the dates established by testimony or exhibits.

34. Major Fraud Against the United States: The Indictment and the Statute¹

The indictment charges the defendant with Major Fraud Against the United States. The indictment reads as follows:

From in and around May 2015 and continuing through at least in and around April 2023, in the District of Maryland, and elsewhere, the defendant, Hoau-Yan Wang did knowingly execute, and attempt to execute, a scheme and artifice with the intent to defraud the United States and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that such pretenses, representations, and promises were false and fraudulent when made, in a grant, contract, subcontract, subsidy, guarantee, insurance, and other form of Federal assistance, the value of such grant, contract, subcontract, subsidy, guarantee, insurance, and form of Federal assistance, and any constituent part thereof, being \$1,000,000 or more.

Acts in Execution or Attempted Execution of the Scheme and Artifice

On or about the date set forth below, in the District of Maryland and elsewhere, the defendant, **HOAU-YAN WANG**, did knowingly execute, and attempt to execute, a scheme and artifice with the intent to defraud the United States and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, in a grant, being \$1,000,000 or more, through the following execution and attempted execution of the scheme and artifice:

Count	APPROX. DATE	Description of FRAUDULENT APPLICATION
1	January 12, 2018	Submission of fraudulent Proposal 1 to NIH

¹ 1 Modern Federal Jury Instructions-Criminal, 18.02 Major Fraud Against the United States, Instruction 18-8

[end of indictment language]The indictment charges the defendant with violating section 1031 of Title 18 of the United States Code. That section provides:

Whoever knowingly executes, or attempts to execute, any scheme or artifice with the intent—

(1) to defraud the United States; or

(2) to obtain money or property by means of false or fraudulent pretenses, representations, or promises,

in any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, including through the Troubled Asset Relief Program, an economic stimulus, recovery or rescue plan provided by the Government, or the Government's purchase of any troubled asset as defined in the Emergency Economic Stabilization Act of 2008, or in any procurement of property or services as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, if the value of such grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, or any constituent part thereof, is \$1,000,000 or more shall, be guilty of a crime.

35. Major Fraud Against the United States: Elements of the Offense²

In order to prove the crime of fraud against the United States, the government must establish each of the following elements beyond a reasonable doubt:

The indictment charges the defendant with violating section 1031 of Title 18 of the United States Code. That section provides:

First, that there was a scheme to defraud the United States (or a scheme to obtain money or funds from the United States government by means of materially false or fraudulent pretenses, representations or promises) as charged in the indictment;


Second, that the defendant executed or attempted to execute the scheme with the intent to defraud the United States government;

Third, that the scheme took place with respect to a grant provided by the United States government; and


Fourth, that the value of that grant, or the constituent part thereof, was at least \$1,000,000.

² 1 Modern Federal Jury Instructions-Criminal, 18.02 Major Fraud Against the United States, Instruction 18-9


36. Major Fraud Against the United States: First Element – Scheme To Defraud the United States³

The first element that the government must prove beyond a reasonable doubt is that there was a scheme to obtain money or property from the United States government by means of false or fraudulent pretenses, representations or promises as described in the indictment. A representation is fraudulent if it was falsely made with the intent to deceive. 

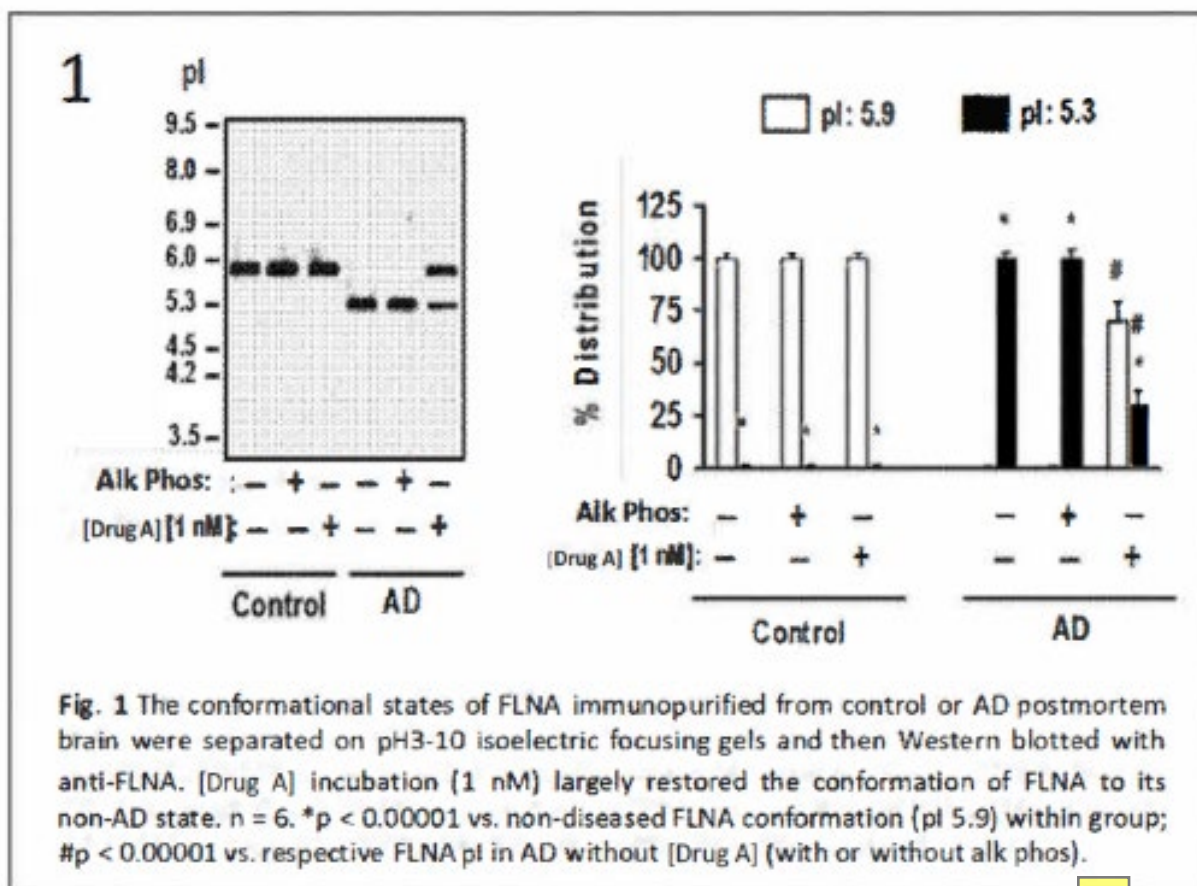
The deception need not be premised upon spoken or written words alone. If there is intentional misrepresentation, the manner in which it is accomplished does not matter.

A fraudulent representation must relate to a material fact or matter. A  material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision. This means that if you find a particular statement of fact to have been false, you must determine whether that statement was one that a reasonable person might have considered important in making his or her decision.

The representations which the government charges were made as part of the scheme are: set forth below:

On or about January 12, 2018, in response to an NIH funding announcement,  WANG caused to be submitted to NIH a certain funding proposal (“Proposal 1”). Proposal 1 listed WANG as a co- Investigator and included a budget request for \$118,975 for the total cost of his anticipated work at University 1, including salary and benefits. Proposal 1 contained false statements and material omissions concerning, among other things, a Western blot purporting to show Drug A’s mechanism of action, as depicted in Figure 1 of the submission:

³ 1 Modern Federal Jury Instructions-Criminal, 18.02 Major Fraud Against the United States, Instruction 18-10



WANG provided Figure 1 and accompanying draft language to Company 1 for the NIH applications. In truth and in fact, WANG fabricated the Western blot on the left side of Figure 1 and the corresponding densitometry data related to it in the bar charts on the right side of Figure 1. Proposal 1 also included citations to the same published articles as described above.

1. \

(End of description of alleged misrepresentations)

It is not required that every misrepresentation listed be proved. It is sufficient if the prosecution proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme

Although it is not necessary for the government to prove an actual loss of funds by the government, the government must prove beyond a reasonable doubt that by executing or

attempting to execute the scheme alleged in the indictment, the defendant placed the government at a risk of loss and that the government did not knowingly accept such a risk.

37. Major Fraud Against the United States: Second Element – Intent to Defraud⁴

The second element the government must prove beyond a reasonable doubt is that the defendant executed or attempted to execute the scheme knowingly, willfully and with specific intent to defraud the government.

“Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently, or out of ignorance, accident, or carelessness.

“Willfully” means to act knowingly and purposely, with knowledge that one’s conduct is unlawful and with the intent to do something the law forbids, that is to say, with bad purpose either to disobey or to disregard the law. The defendant’s conduct was not “willful” if it was due to negligence, inadvertence, or mistake or was the result of a good faith misunderstanding of the requirement of the law. In this connection, it is for you to decide whether defendant acted in good faith, that is, whether he sincerely misunderstood the requirements of the law, or whether he knew what he was required to do and deliberately did not do so.

To act with intent to defraud means to act willfully and with the specific intent to deceive, for the purpose of causing some financial loss to another. Before you can find that the defendant acted intentionally, you must be satisfied beyond a reasonable doubt that he acted deliberately and purposefully. That is, his acts must have been the product of his conscious objective rather than the product of a mistake or accident.

The question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one’s state of mind. Knowingly, willfully, and with intent to defraud are all required elements. Satisfying one of the above three definitions is insufficient to satisfy this element.

⁴ 1 Modern Federal Jury Instructions-Criminal, 18.02 Major Fraud Against the United States, Instruction 18-11.

Good faith is a complete defense to the charges in this case. If Dr. Wang believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were injured by his conduct, there would be no crime. The burden of establishing lack of good faith and criminal intent rests on the government. A defendant is under no burden to prove his good faith; rather, the government must prove bad faith or knowledge of falsity beyond a reasonable doubt.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom. Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime charged must be established beyond a reasonable doubt.

38. Major Fraud Against the United States: Third Element – Government Grant⁵

The third element that the government must prove beyond a reasonable doubt is that the scheme took place with respect to a grant provided by the United States government.

⁵ 1 Modern Federal Jury Instructions-Criminal, 18.02 Major Fraud Against the United States, Instruction 18-12

39. Major Fraud Against the United States: Fourth Element – Value of Grant⁶

The fourth element that the government must prove beyond a reasonable doubt is that the value of that government grant was at least \$1,000,000.

The value of a grant is the amount to be paid by the government under the grant.



⁶ 1 Modern Federal Jury Instructions-Criminal, 18.02 Major Fraud Against the United States, Instruction 18-13

40. **Wire Fraud: The Indictment and the Statute⁷**

The Indictment charges that the defendant devised a scheme to defraud (e.g., by means of false representations) and in furtherance of that scheme knowingly caused interstate wires to be used.

The Indictment reads:

From in and around May 2015 through and continuing through in and around April 2023, within the District of Maryland and elsewhere, the defendant, Hoau-Yan Wang did knowingly and with the intent to defraud, having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing such pretenses, representations, and promises were false and fraudulent when made, transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, writings, signals, pictures, and sounds, for the purpose of executing such scheme and artifice.

Use of Wires

On or about the dates set forth below, each such date constituting a separate count of this Indictment, in the District of Maryland and elsewhere, the defendant, **HOAU-YAN WANG**, for the purpose of executing and attempting to execute the scheme and artifice to defraud, did knowingly transmit and cause to be transmitted in interstate commerce by means of a wire communication, certain signals, signs and sounds, as set forth below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE
2	March 22, 2019	NIH's electronic ACH instructions submission to the Federal Reserve Board to initiate

⁷ 2 Modern Federal Jury Instructions-Criminal, 44.01 Mail and Wire Fraud, Instruction 44-1

		payments in connection with fraudulent Proposal 1, in the approximate amount of \$32,815
3	June 18, 2021	NIH's electronic ACH instructions submission to the Federal Reserve Board to initiate payments in connection with fraudulent Proposal 2, in the approximate amount of \$125,026

(End of Indictment language)

The relevant statute on this subject is section 1343 of Title 18 of the United States Code. It provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire radio or television communication in interstate or foreign commerce, any writings, signs, signals, pictures or sounds for the purpose of executing such scheme or artifice shall be guilty of a crime.

41. Wire Fraud: Elements of the Offense⁸

In order to sustain this charge, the government must prove each of the following elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud or to obtain money or property by materially false and fraudulent pretenses, representations or promises, as alleged in the indictment;

Second, that the defendant knowingly and willfully participated in the scheme or artifice to defraud, with knowledge of its fraudulent nature and with specific intent to defraud; and

Third, that in execution of that scheme, the defendant used or caused the use of interstate wires as specified in the indictment.

⁸ 2 Modern Federal Jury Instructions-Criminal, 44.01 Mail and Wire Fraud, Instruction 44-3

42. Wire Fraud: First Element – Existence of a Scheme or Artifice to Defraud⁹

The first element that the government must prove beyond a reasonable doubt is that there was a scheme or artifice to defraud the victim of money or property by means of false or fraudulent pretenses, representations, or promises.

This first element is almost self-explanatory.

A “scheme or artifice” is a plan for the accomplishment of an object.

A scheme to defraud is any plan, device, or course of action to obtain money or property by means of false or fraudulent pretenses, representations, or promises reasonably calculated to deceive persons of average prudence.

“Fraud” is a general term that embraces all the various means that human ingenuity can devise and that are resorted to by an individual to gain an advantage over another by false representations, suggestions, or suppression of the truth, or deliberate disregard for the truth.

Thus, a “scheme to defraud” is a plan to deprive another of money or property by trick, deceit, deception or swindle.

The scheme to defraud is alleged to have been carried out by making false or fraudulent statements, representations, claims, or documents.

A statement, representation, claim, or document is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made.

A representation or statement is fraudulent if it was falsely made with the intention to deceive.

The deception need not be premised upon spoken or written words alone. If there is deception, the manner in which it is accomplished is immaterial.

⁹ 2 Modern Federal Jury Instructions-Criminal, 44.01 Mail and Wire Fraud, Instruction 44-4

The false or fraudulent representation must relate to a material fact or matter. A material fact is one that would reasonably be expected to be of concern to a reasonable and prudent person in relying upon the representation or statement in making a decision (e.g., with respect to a proposed investment).

This means that if you find a particular statement of fact to have been false, you must determine whether that statement was one that a reasonable person or investor might have considered important in making his or her decision.

The representations that the government charges were made as part of the scheme to defraud are set forth in Instruction No. 36 (Major Fraud Against the United States – First Element – Scheme To Defraud the United States), which I have already read to you. It is not required that every misrepresentation charged in the indictment be proved. It is sufficient if the prosecution proves beyond a reasonable doubt that one or more of the alleged material misrepresentations were made in furtherance of the alleged scheme to defraud.

In addition to proving that a statement was false or fraudulent and related to a material fact, in order to establish a scheme to defraud, the government must prove that the alleged scheme contemplated depriving another of money or property.

However, the government is not required to prove that the defendant personally originated the scheme to defraud. Furthermore, it is not necessary that the government prove that the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss.

A scheme to defraud need not be shown by direct evidence, but may be established by all of the circumstances and facts in the case.

If you find that the government has sustained its burden of proof that a scheme to defraud, as charged, did exist, you next should consider the second element.

43. Wire Fraud: Second Element – Participation in Scheme with Intent¹⁰

The second element that the government must prove beyond a reasonable doubt is that the defendant participated in the scheme to defraud knowingly, willfully and with specific intent to defraud.

“Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently, or out of ignorance, accident, or carelessness.

“Willfully” means to act knowingly and purposely, with knowledge that one’s conduct is unlawful and with the intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law. The defendant’s conduct was not “willful” if it was due to negligence, inadvertence, or mistake or was the result of a good faith misunderstanding of the requirement of the law. In this connection, it is for you to decide whether defendant acted in good faith, that is, whether he sincerely misunderstood the requirements of the law, or whether he knew what he was required to do and deliberately did not do so.

“Intent to defraud” means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial or property loss to another. Before you can find that the defendant acted intentionally, you must be satisfied beyond a reasonable doubt that he acted deliberately and purposefully. That is, his acts must have been the product of his conscious objective rather than the product of a mistake or accident.

The question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine, like any other fact question. This question involves one’s state of mind.

¹⁰ 2 Modern Federal Jury Instructions-Criminal, 44.01 Mail and Wire Fraud, Instruction 44-5

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence, based upon a person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime must be established beyond a reasonable doubt.

Since an essential element of the crime charged is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of wire fraud. If Dr. Wang believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were injured by his conduct, there would be no crime. A defendant, however, has no burden to establish a defense of good faith. The burden is on the government to prove fraudulent intent and the consequent lack of good faith beyond a reasonable doubt.

Under the wire fraud statute, even false representations or statements, or omissions of material facts, do not amount to a fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a defendant is a good defense, however inaccurate the statements may turn out to be.

As a practical matter, then, in order to sustain the charges against the defendant, the government must establish beyond a reasonable doubt that he knew that his conduct as a participant

in the scheme was calculated to deceive and, nonetheless, he associated himself with the alleged fraudulent scheme for the purpose of causing some loss to another.

To conclude on this element, if you find that the defendant was not a knowing participant in the scheme or that he lacked the specific intent to defraud, you should find the defendant not guilty. On the other hand, if you find that the government has established beyond a reasonable doubt not only the first element, namely the existence of the scheme to defraud, but also this second element, that the defendant was a knowing participant and acted with specific intent to defraud, and if the government also establishes the third element, as to which I am about to instruct you, then you have a sufficient basis upon which to convict the defendant.

44. Wire Fraud: Third Element – Use of the Wires¹¹

The third and final element that the government must establish beyond a reasonable doubt is the use of an interstate or international wire communication in furtherance of the scheme to defraud.

The wire communication must pass between two or more states as, for example, a telephone call between New York and New Jersey; or it must pass between the United States and a foreign country, such as a telephone call between New York and London. A wire communication also includes a wire transfer of funds between banks in different states or between a bank in the United States and a bank in a foreign country.

The use of the wires need not itself be a fraudulent representation. It must, however, further or assist in the carrying out of the scheme to defraud.

It is not necessary for the defendant to be directly or personally involved in the wire communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating.

In this regard, it is sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others. This does not mean that the defendant must specifically have authorized others to make the call (*or* transfer the funds). When one does an act with knowledge that the use of the wires will follow in the ordinary course of business or where such use of the wires can reasonably be foreseen, even though not actually intended, then he causes the wires to be used.

With respect to the use of the wires, the government must establish beyond a reasonable doubt the particular use charged in the indictment. However, the government does not have to

¹¹ 2 Modern Federal Jury Instructions-Criminal, 44.01 Mail and Wire Fraud, Instruction 44-7

prove that the wires were used on the exact date charged in the indictment. It is sufficient if the evidence establishes beyond a reasonable doubt that the wires were used on a date substantially similar to the dates charged in the indictment.



45. False Statements: The Indictment and the Statute¹²

The defendant is charged with knowingly and willfully making false statements to the National Institutes of Health, an agency of the United States. The indictment reads as follows:

On or about November 18, 2019, in the District of Maryland and elsewhere, in a matter within the jurisdiction of the executive branch of the Government of the United States, the defendant, Hoau-Yan Wang, did knowingly and willfully make materially false, fictitious, and fraudulent statements and representations, to wit: in a filed submission to NIH in connection with fraudulent Proposal 2, WANG fabricated the Western blots depicted in multiple figures and made false representations about the results of the experiments depicted.

[end of Indictment language]

You will observe that the indictment charges that the defendant knowingly and willfully made materially false, fictitious, or fraudulent statements or representations.

In this case, the government contends that the evidence shows that the defendant knowingly and willfully made materially false, fictitious or fraudulent statements and representations, to wit: in a filed submission to the National Institutes of Health in connection with fraudulent Proposal 2, defendant fabricated the Western blots depicted in multiple figures and made false representations about the results of the experiments depicted.

The relevant statute on this subject is section 1001(a) of Title 18 of the United States Code. It provides:

Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

¹² 2 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-1

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry
- shall be guilty of a crime.



46. False Statements: Purpose of the Statute¹³

The purpose of § 1001 is to protect the authorized functions of the various governmental departments from any type of deceptive practice and from the adverse consequences that might result from such deceptive practices.

To establish a violation of § 1001, it is necessary for the government to prove certain essential elements—which I will soon describe for you—beyond a reasonable doubt. However, I want to point out now that it is not necessary for the government to prove that the government agency was, in fact, deceived as a result of the defendant’s action. It does not matter that the agency was not deceived, or even that it knew of the deceptive act, should you find that the act occurred. These circumstances would not excuse or justify a concealment undertaken, or a false, fictitious or fraudulent statement made, or a false writing or document submitted, willfully and knowingly about a matter within the jurisdiction of the government of the United States. The statute covers actions by government employees as well as by private individuals.

¹³ 2 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-2

47. False Statements: Elements of the Offense¹⁴

In order to prove the defendant guilty of the crime charged, the government must prove beyond a reasonable doubt that:

First, on or about the date specified, the defendant made a statement or representation;

Second, that this statement or representation was material;

Third, the statement or representation was false, fictitious or fraudulent;

Fourth, the false, fictitious or fraudulent statement was made knowingly and willfully; and

Fifth, the statement or representation was made in a matter within the jurisdiction of the government of the United States or federal funds were involved.

¹⁴ 2 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-9

48. False Statements: The First Element – Statement or Representation¹⁵

The first element that the government must prove beyond a reasonable doubt is that the defendant made a statement or representation. In this regard, the government need not prove that the defendant physically made or otherwise personally prepared the statement in question. It is sufficient if the defendant caused the statement charged in the indictment to have been made. Under this statute, there is no distinction between written and oral statements.

¹⁵ 2 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-10

49. False Statements: The Second Element – Materiality¹⁶

The second element the government must prove beyond a reasonable doubt is that the defendant's statement or representation was material.

A fact is material if it was capable of influencing the government's decisions or activities. However, proof of actual reliance on the statement by the government is not required.

¹⁶ 2 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-11

50. False Statements: The Third Element – False, Fictitious or Fraudulent Statement¹⁷

The third element that the government must prove beyond a reasonable doubt is that the statement or representation was false, fictitious or fraudulent. A statement or representation is “false” or “fictitious” if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made. A statement or representation is “fraudulent” if it was untrue when made and was made or caused to be made with the intent to deceive the government agency to which it was submitted.

¹⁷ 2 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-12

51. False Statements: The Fourth Element – Knowing and Willful Conduct¹⁸

The fourth element that the government must prove beyond a reasonable doubt is that the defendant acted knowingly and willfully.

An act is done knowingly if it is done purposely and voluntarily, as opposed to mistakenly, accidentally, inadvertently, or out of ignorance or carelessness.

An act is done willfully if it is done with knowledge that one's conduct is unlawful and with the intention to do something the law forbids, that is, with a bad purpose to disobey or to disregard the law. The defendant's conduct was not "willful" if it was due to negligence, inadvertence, or mistake or was the result of a good faith misunderstanding of the requirement of the law. In this connection, it is for you to decide whether defendant acted in good faith, that is, whether he sincerely misunderstood the requirements of the law, or whether he knew what he was required to do and deliberately did not do so.

Good faith is a complete defense to the charges in this case. A statement made with good faith belief in its accuracy does not amount to a false statement and is not a crime. This is so even if the statement is, in fact, erroneous. The burden of establishing lack of good faith and criminal intent rests on the government. A defendant is under no burden to prove his good faith; rather, the government must prove bad faith or knowledge of falsity beyond a reasonable doubt.

¹⁸ 2 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-13

52. False Statements: The Fifth Element – Matter Within the Jurisdiction of the United States Government¹⁹

As I have told you, the fifth element with respect to each count is that the statement representation be made with regard to a matter within the jurisdiction of the government of the United States. I charge you that the National Institutes of Health is a department of the United States government.

There is no requirement that the statement be actually directed to or given to the National Institutes of Health. All that is necessary is that you find that it was contemplated that the document was to be used in a matter that was within the jurisdiction of the government of the United States or that federal funds were involved. To be within the jurisdiction of a department or agency of the United States government means that the statement must concern an authorized function of that department or agency.

In this regard, it is not necessary for the government to prove that the defendant had actual knowledge that the false statement or representation was to be used in a matter that was within the jurisdiction of the government of the United States. It is sufficient to satisfy this element if you find that the false statement was made with regard to a matter within the jurisdiction of the government of the United States.

¹⁹ 1 Modern Federal Jury Instructions-Criminal, 36.01 False Statements, Instruction 36-14

53. Willfully Causing a Crime²⁰

A person may be guilty of an offense because he knowingly and willfully committed the offense himself or because he knowingly and willfully caused another person to commit acts which would constitute the offense if the acts had been performed by him directly.²¹

Section 2(b) of the aiding and abetting statute reads as follows: “Whoever willfully causes an act to be done which, if directly performed by him, would be an offense against the United States, is punishable as a principal.”

What does the term “willfully caused” mean? It does not mean that the defendant himself need have physically committed the crime or supervised or participated in the actual criminal conduct charged in the indictment.

The meaning of the term “willfully caused” can be found in the answers to the following questions:

With respect to the crime of Major Fraud Against the United States, which is charged in Count 1, did the defendant intend to defraud the NIH in connection with Proposal 1 knowingly and willfully?

Did the defendant intentionally cause another person to submit Proposal 1, with knowledge when it was submitted that it contained a materially false, fictitious or fraudulent statement or representation?

If you are persuaded beyond a reasonable doubt that the answer to both questions is “yes,” then the defendant is guilty of Major Fraud Against the United States as charged in Count 1 just as if he himself had actually committed it.

²⁰ 1 Modern Federal Jury Instructions-Criminal, 11.02 Willfully Causing a Crime, Instruction 11-3 (modified)

²¹ Third Circuit Model Criminal Jury Instruction 7.05.

With respect to the crime of false statements, which is charged in Count 5, did the defendant intend to make a false statement about a material fact to the NIH in connection with Proposal 2

Did the defendant intentionally cause another person to make a false statement about a material fact in Proposal 2?

If you are persuaded beyond a reasonable doubt that the answer to both questions is “yes,” then the defendant is guilty of False Statements as charged in Count 4 just as if he himself had actually committed it.

54. Authentication of Evidence²²

The defense has raised the issue of defects in the authenticity of the source images submitted in the grant applications to NIH. The government has the burden of proving that the evidence offered is what the government claims it is.²³

²² S1 Modern Federal Jury Instructions-Criminal, 4.12 Chain of Custody (taken from Third Circuit Pattern Jury Instructions); *see also* District of South Carolina Pattern Jury Instructions on Chain of Custody.

²³ District of South Carolina Pattern Jury Instruction on Chain of Custody.

55. Statute of Limitations²⁴

Dr. Wang has raised the defense that the statute of limitations ran out before the government obtained an Indictment charging him in this case. The statute of limitations is a law that puts a limit on how much time the government has to obtain an Indictment. For you to find Dr. Wang guilty, the government must prove beyond a reasonable doubt that the crimes alleged in each count were committed within the applicable statute of limitations, which is 7 years for Count 1 (major fraud) and 5 years for Counts 2 and 3 (wire fraud) and Count 4 (false statements) from the indictment in this case. In other words, for Count 1, the government must prove that the crime alleged was committed on or after February 12, 2017, and for Counts 2-4, the government must prove that the crimes alleged were committed on or after February 12, 2019.




²⁴ District of South Carolina Pattern Jury Instructions, Instruction VI(T) Statute of Limitations.

56. Venue²⁵

In addition to the foregoing elements of the offense, you must consider whether any act in furtherance of the crime occurred within the district of Maryland. You are instructed that the district of Maryland encompasses all counties within Maryland. In this regard, the government need not prove that the crime itself was committed in this district or that the defendant himself was present here. It is sufficient to satisfy this element if any act in furtherance of the crime occurred within this district. If you find that the government has failed to prove that any act in furtherance of the crime occurred within this district—or if you have a reasonable doubt on this issue—then you must acquit.

²⁵ 1 Modern Federal Jury Instructions-Criminal P 3.01, Instruction 3-11 Venue.

57. Punishment

 The question of possible punishment of the defendant is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the judge. Your function is to weigh the evidence in the case and to determine whether or not the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot allow consideration of the punishment which may be imposed upon the defendant, if he is convicted, to influence your verdict in any way or, in any sense, to enter into your deliberations.

IV. JURY DELIBERATIONS

58. Deliberations and Verdict Form



Members of the Jury, thank you for your attention today during my instructions on the law and the attorneys' closing arguments. We have now reached the time for you to begin your deliberations on this case. My warnings not to discuss the case among yourselves will no longer apply once you begin your deliberations. At that time, it will be your job to discuss the case and reach a verdict. However, my preliminary instruction that you are not to discuss this case with family members, friends, co-workers, the media, or anyone else, and that you are not to do any independent research about this case, still applies during your deliberations.

Specifically, during your deliberations, you should not discuss the case with, or provide any information about the case to, anyone other than your fellow jurors. This includes discussing the case in person, in writing, by phone, or by any electronic means, including text messaging, email, any social media outlet, or anywhere else on the internet. You may not talk to anyone on the phone or in person, correspond with anyone, or communicate by electronic means about this case with anyone except with your fellow jurors and then only while you are in the jury room in formal deliberations.

If you are asked or approached in any way about your jury service or anything about this case, you should respond that you have been ordered by the judge not to discuss the matter, and you should report the contact to the court as soon as possible.

You should not try to access any information about the case or do research on any issue that arose during the trial from any outside source, including dictionaries, reference books, or anything on the internet. Information that you may find on the internet or in printed reference materials might be incorrect or incomplete. In our court system, it is important that you not be

influenced by anyone or anything outside this courtroom. Your sworn duty is to decide this case solely and wholly on the evidence that was presented to you in this courtroom.



When you retire to the jury room, your first order of business will be to select one member of the jury to serve as your foreperson. The foreperson will sign all communications with the Court, including the Verdict Form, and be your spokesperson here in Court.

If you need to communicate with me during your deliberations, such communication must be made in writing, in a note signed by your foreperson or one or more members of the jury. You should give the note to the bailiff (the security officer who will be sitting outside the jury room). I will respond to any notes as promptly as possible, either in writing or by having you return to the courtroom so I can speak with you in person. I usually must consult with the attorneys before responding, and because that may take some time, you should continue to deliberate as you await a response. No member of the jury should ever attempt to communicate with me by any means other than a signed writing. I will never communicate with any member of the jury on any subject relating to the merits of the case, other than in writing, or orally here in open court. You are never to reveal to any person—and must not include in any note to me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict.

You will note from the oath about to be taken by the bailiff that he, too, as well as all other persons, is forbidden to communicate in any way or manner with any members of the jury on any subject relating to the merits of the case.

As I explained earlier, the Government must prove each of the essential elements of the charged crimes beyond a reasonable doubt. Your function during jury deliberations is to weigh the evidence in the case and determine whether or not the defendant is guilty, solely on the basis

of such evidence. If the Government succeeds in meeting its burden, your verdict should be guilty; if it fails, it should be not guilty. To report a verdict, it must be unanimous.

Each of you as a juror is entitled to your opinion. You should, however, exchange views with your fellow jurors. That is the very purpose of jury deliberations—to discuss and consider the evidence, to listen to the arguments of fellow jurors, and to present your individual views.

In reaching a unanimous verdict, it is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if you are convinced that it is erroneous. But if, after carefully considering all the evidence and the arguments of your fellow jurors, you have a conscientious view that differs from the others, do not surrender your honest conviction solely because of the opinion of your fellow jurors, because you are outnumbered, or for the mere purpose of returning a verdict.

Your final vote must reflect your conscientious conviction as to how the issues should be decided. Your verdict, whether guilty or not guilty, must be unanimous, reflecting the considered judgment of each and every one of you.

You will return your verdict by marking answers to the written questions in the Verdict Form which will be provided to you. Each answer is to be marked in the space provided after each question. It is your duty to answer each of the questions in accordance with the evidence in this case. Please follow the instructions on the Verdict Form carefully. The foreperson should mark the answers and sign and date the Verdict Form.

When you reach a unanimous verdict, send a note to me through the bailiff stating that you have reached a verdict, without stating the verdict itself. Do not send the Verdict Form. When asked to do so, return to the courtroom and have your foreperson bring the Verdict Form with him or her.